

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

Appeal No. 92/2024

BETWEEN:

JUSTINE KUNDA

APPELLANT

AND

THE PEOPLE

RESPONDENT



Coram: Mchenga DJP, Majula and Muzenga, JJA

On 13th January, 2026 and 24th March, 2026

*For the Appellant: Ms. M. Nzala, Senior Legal Aid Counsel, Legal Aid Board
Mrs. Maria Buluku Kapolo, Legal Aid Counsel, Legal Aid Board*

For the Respondent: Ms. Cassandra Soko, Chief Administrator, National Prosecution Authority

JUDGMENT

MAJULA JA, delivered the Judgment of the Court.

Cases referred to:

1. *Ibrahim v R (1914) AC 599*
2. *The People v Chanda (1972) ZR 116*
3. *Muwowo v The People (1965) ZR 91*
4. *David Zulu v The People (1977) ZR 151*
5. *Chabala v The People (1975) ZR 98*
6. *Peter Yotamu Haamenda v The People (2017) Z.R. 184 (S.C.)*
7. *Nsofu v The People (1973) ZR 287 (SC)*

8. *Lameck Namushi and Another v The People, SCZ Appeal No. 45 and of 2020*
9. *Francis Ngoso v The People, CAZ Appeal No. 069 of 2020*
10. *Saviour Mukanso v The People, SCZ Appeal No. 80 of 2017*
11. *Saidi Banda v. The People, SCZ Appeal 144/2015*

Legislation referred to:

1. *The Penal Code, Chapter 87 of the Laws of Zambia*

1.0 INTRODUCTION

1.1 This appeal challenges both the conviction and the sentence arising from the Judgment of the High Court at Ndola, delivered on 1st February, 2024 by Lady Justice Dr. Winnie Sithole Mwenda, in which the Appellant, Justine Kunda, was convicted of murder contrary to **Section 200** of the **Penal Code**.

2.0 THE CASE BEFORE THE TRIAL COURT

2.1 The Appellant was charged with murdering his elder brother, Damson Kunda, on the night of 7th July or the early hours of 8th July, 2023 at Pamodzi Overspill in Ndola. The prosecution's case was that the two brothers were alone in their two-roomed house, and that the deceased was later found dead nearby with a deep chop wound to the head. Blood-stained bedding was recovered from their bedroom, and an axe was found hidden in the sitting room. A post-mortem confirmed death from a severe chop injury, and the prosecution relied on a statement in which the Appellant admitted killing the deceased after a dispute.

2.2 The Appellant denied the charge, claimed he was not at the house that night, and alleged that his confession was obtained through torture. He called no witnesses in his defence.

3.0 FINDINGS OF THE LOWER COURT

3.1 The trial Judge carefully considered both the prosecution and defence evidence and found that the deceased died from an unlawful act, that the Appellant was the only person living with the deceased at the time, and that the murder occurred in their shared house. The Judge held that the circumstantial evidence was strong and consistent, ruled out the risk of false implication by the prosecution witnesses, including the deceased's father, and found that the Appellant's confession was voluntary and properly admitted after a trial within a trial. Although the Court noted that the police failed to check the axe for fingerprints, it held that this omission was outweighed by the strong prosecution evidence. The Appellant's defence was rejected as false, and he was accordingly convicted of murder and sentenced to life imprisonment.

4.0 GROUNDS OF APPEAL

4.1 The Appellant has filed two grounds of appeal challenging the decision of the Court below, couched as follows:

1. *The learned trial Judge erred and misdirected herself both in law and fact when she admitted the confession statement in the absence of conclusive evidence that it was given by the accused person freely and voluntarily.*

2. *The learned trial Judge erred and misdirected herself both in law and fact when she convicted the Appellant based on circumstantial evidence which had not taken the case out of the realm of conjecture so as to permit only an inference of guilt owing to the serious dereliction of duty on the part of the investigations officer."*

5.0 APPELLANT'S ARGUMENTS

- 5.1 In written heads of argument filed on 31 December, 2025, Counsel for the Appellant challenged both the conviction and sentence on two main grounds. First, Counsel attacked the admission of the confession, arguing that it was not made freely and voluntarily. It was submitted that the Appellant was interrogated in custody in the presence of several police officers, without legal representation or a family member, creating a coercive environment. Counsel argued that the prosecution failed to prove voluntariness beyond reasonable doubt and relied on *Ibrahim v R*,¹ *The People v Chanda*,² and *Muwowo v The People*³ for the principle that confessions must be voluntary and obtained under fair conditions. It was contended that the trial Court misdirected itself in admitting the statement, thereby rendering the conviction unsafe.
- 5.2 Secondly, Counsel submitted that the conviction was based on weak circumstantial evidence and was undermined by serious investigative lapses. Relying on *David Zulu v The People*⁴ and *Chabala v The People*,⁵ Counsel argued that the evidence did not exclude other reasonable inferences. The alleged shortcomings included the failure to lift fingerprints

from the axe, lack of forensic analysis of bloodstains, and non-disclosure of a statement made by the Appellant. Citing ***Peter Yotamu Haamenda v The People***,⁶ Counsel argued that these lapses prejudiced the defence and, in the absence of overwhelming evidence, rendered the conviction unsafe. The Court was therefore urged to set aside both the conviction and the sentence.

6.0 RESPONDENT'S ARGUMENTS

- 6.1 In written submissions filed on 13 January, 2026, learned Counsel for the Respondent defended the conviction, submitting that both the confession and the circumstantial evidence were sufficient to sustain the finding of guilt. She addressed each ground of appeal with reference to both evidence and settled authority.
- 6.2 On the admissibility of the confession, Counsel argued that the absence of an independent witness during the warn and caution process did not render the statement inadmissible, as there is no legal requirement for such a safeguard. She submitted that the Appellant failed to show that the confession was not made freely and voluntarily, or that it was obtained through fear, force, or inducement. Reliance was placed on ***The People v Chanda***,² where the Court held that a confession should only be excluded if it was obtained under unfair circumstances.
- 6.3 With respect to circumstantial evidence, Counsel maintained that even without the confession, the prosecution case remained strong. She submitted that the Appellant was the

last person seen with the deceased, that his explanation was discredited, that his conduct after the death was unusual, that the murder weapon and blood-stained bedding were found concealed in the house, and that there was evidence of attempts to clean the scene. She relied on ***Nsofu v The People***⁷ for the principle that opportunity may amount to corroboration depending on the circumstances, ***Lameck Namushi and Another v The People***⁸ for the proposition that a discredited explanation may strengthen the chain of circumstantial evidence, and ***Francis Ngoso v The People***⁹ for the principle that unexplained unusual conduct may support an inference of guilt. Further reliance was placed on ***Saviour Mukanso v The People***,¹⁰ which affirms that circumstantial evidence is not inferior to direct evidence and may, if it forms a complete chain, found a conviction.

- 6.4 Counsel concluded that when the circumstantial evidence is considered as a whole, it forms an unbroken chain pointing irresistibly to the Appellant as the perpetrator, and urged the Court to dismiss the appeal and uphold the conviction.

7.0 HEARING OF THE APPEAL

- 7.1 When the matter came up for hearing on 13th January, 2026, learned Counsel on both sides relied on their respective filed documents, which they supplemented with brief oral submissions.

8.0 DECISION OF THIS COURT

8.1 We have carefully considered the grounds of appeal and the supporting arguments and shall address them in the sequence in which they were raised.

Ground One — Voluntariness of Confession Statement

8.2 The first ground of appeal challenges the admission of the Appellant's confession on the basis that it was not made freely and voluntarily, and that the prosecution failed to prove voluntariness beyond reasonable doubt. This issue was carefully considered.

8.3 The trial Judge dealt with the matter in a trial within a trial and gave reasons for admitting the statement. The Court found that the Appellant signed the warn and caution statement dated 12th July, 2023, admitted making it to the recording officer, and did not dispute his signature. His complaint was that the statement did not accurately reflect what he said and that it was obtained through beatings and threats. The prosecution called PW5 and PW6, who denied any coercion and testified that the Appellant was treated well and questioned in a proper environment. Although there was a minor inconsistency about the number of officers present, the trial Court found the prosecution's witnesses credible. The Appellant also admitted that none of the officers was armed, produced no evidence of injuries, and did not report any assault to his father or the Magistrate. On this basis, the trial Court found that the confession was made freely and voluntarily and admitted it.

8.4 It is settled law that voluntariness is a question of fact for the trial Court, and an appellate Court will only interfere where the finding is not supported by evidence or has caused a miscarriage of justice. In this case, the trial Court conducted a proper inquiry, evaluated the evidence, and gave clear reasons for its decision. We find no error in that approach and no basis to interfere. We do note that the decision of the trial Court was not solely anchored on the confession statement but heavy reliance was placed on the circumstantial evidence adduced. All in all, we take the view that the confession was properly admitted, and the first ground of appeal is accordingly dismissed.

Ground Two — Circumstantial Evidence

8.5 In the second ground of appeal, the Appellant argues that the trial Court wrongly convicted him on circumstantial evidence, contending that the evidence was speculative and failed to exclude other reasonable explanations. He also criticised the police investigation, pointing to the failure to lift fingerprints from the axe, the lack of forensic testing on bloodstains, and the non-production of a statement made while in custody.

8.6 It is settled law that circumstantial evidence must be treated with caution. In *David Zulu v The People*,⁴ the Supreme Court held that such evidence must exclude every reasonable hypothesis consistent with innocence, as suspicion alone cannot ground a conviction. However, the Courts have equally held that circumstantial evidence can be strong and sufficient when properly assessed. In *Saidi Banda v The People*,¹¹ the Supreme Court explained that a Court must first establish basic facts and then determine whether, taken

together, those facts lead to a clear and irresistible inference of guilt.

- 8.7 Although the trial Court did not expressly list the individual strands of circumstantial evidence, this omission is not fatal. From the record, the undisputed facts are clear: the Appellant and the deceased were alone in the house, blood was found on their shared bedding, an axe was recovered from the house, and the deceased was later found dead nearby with a severe chop wound to the head. When these facts are considered together, they form a strong and consistent chain pointing to the Appellant's guilt. The learned trial Judge accepted the events as narrated by the prosecution and rejected the version advanced by the Appellant.
- 8.8 The Judge rejected the Appellant's explanation about his whereabouts on the night of the murder. She noted that his claim of being elsewhere at around 02:00 hours, which was central to his defence, was never mentioned to his father, sister, or the arresting officer. She further observed that the Appellant did not call George Chibeka, at whose house he claimed to have spent the night, and did not mention this person in his police statement.
- 8.9 The Judge also found it unbelievable that the Appellant denied knowledge of the bedding and clothes produced in Court, despite having testified that he shared the same bedroom and bed with the deceased. She found the prosecution witnesses to be truthful and credible, concluded that the Appellant had fabricated his defence, and rejected it as not reasonably possible.

8.10 On this basis, the Judge held that the circumstantial evidence was strong and convincing, and led to only one conclusion: that the Appellant was the person who struck the deceased on the head and caused his death.

8.11 Although the investigative shortcomings were acknowledged, the trial Court correctly held that they did not weaken the prosecution's case. The strong circumstantial evidence excluded any reasonable explanation of innocence.

8.12 The central point of our decision is that the conviction was properly based on strong circumstantial evidence. For the reasons already given, this ground of appeal has no merit and is accordingly dismissed.

9.0 CONCLUSION

9.1 Having considered all the evidence, we find no merit in either ground of appeal and accordingly dismiss them. We also find no reason to interfere with the sentence of life imprisonment imposed by the trial Court. The Appellant shall therefore serve the sentence as imposed.



C.F.R. Mchenga

DEPUTY JUDGE PRESIDENT



B. M. Majula

COURT OF APPEAL JUDGE



K. Muzenga

COURT OF APPEAL JUDGE